



DECODING PATENT PROCEDURES: INTERNATIONAL PROTOCOLS AND INNOVATION PROTECTION IN GEORGIA

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ABSTRACT

This investigation explores the complex processes of obtaining patent rights, concentrating on Georgia's changing environment and compliance with global accords. A significant turning point in the country's dedication to preserving intellectual breakthroughs has been reached with the founding of the National Intellectual Property Center of Georgia, or "Sakpatenti". From the difficulties faced by its forerunner, "Patentcenter", to the extensive patent statute, Georgia's path demonstrates its commitment to upholding international standards.

The discourse adeptly navigates the difficulties in acquiring patent rights, highlighting the impact of the Paris Convention and the technical nuances delineated in the Patent Cooperation Agreement. Examining Georgian innovators' ability to seek patent rights through an international application—thereby expediting cross-border processes—is an important component. The connection between patent systems globally is evident in the global procedure's ability to facilitate the protection of inventions.

In conclusion, the procedures outlined grant exclusive rights and ensure the balance between innovators' rights and public knowledge dissemination. Georgia's harmonization with international norms underscores its commitment to fostering innovation and contributing to the global knowledge economy. The exploration of patent procedures reflects the dynamic nature of intellectual property systems in the face of technological advancements and international cooperation.

INTRODUCTION

A key component of intellectual property protection is securing patent rights, which grants authors and inventors exclusive legal rights to their creations. There are several ways to obtain these rights; the process varies based on the kind of intellectual property and the country. The processes for upholding intellectual rights are the main topic of this conversation, especially in light of Georgia's participation in international agreements like the Paris Convention and the Intellectual Cooperation Agreement.

Since gaining sovereignty in the post-Soviet era, the National Intellectual Property Center of Georgia, or "Sakpatenti", was established. Its formation has been essential in defining the country's patent system. Starting with the initial difficulties faced by the former patent examination centre, or "Patentcentre", the pilgrimage symbolizes Georgia's dedication to harmonizing its patent operations with international norms and adhering to the extensive processes specified in the country's patent legislation.

The possibilities for Georgian innovators to pursue patent rights through an international application are highlighted by this inquiry, which also explores the broader framework of multinational patent procedures. Georgians can direct a shortened procedure that includes an international knowledge survey, a 30-month decision-making phase, and a subsequent national patent examination stage in selected countries under the terms of the Patent Cooperation Agreement. This international process promotes the cross-border preservation of inventions and emphasizes how intertwined patent systems are worldwide.

1. PROCEDURE FOR OBTAINING PATENT RIGHTS

There is a different mode of obtaining rights to legal objects of intellectual rights,¹ depending on which institution the object belongs to. For example, copyright and related rights are obtained

without formal procedures.² However, the origin of the rest of the intellectual rights is related to the performance of certain procedures. Obtaining rights to the patent legal object is carried out through a "patent", which implies that this document issued in the name of the patent owner confirms his special rights. The patent includes the patent certificate and the description of the patent (description of the invention, formula of the invention, drawings (if any), and abstract).³ The interested person must sign and submit an application to the registering body expressing the desire to receive a patent. As a result of the examination, the patent will be issued or not issued.⁴ If a patent is not issued, no patent rights can arise. In the comparative legal context of industrial property protection, one of the main aspects of international cooperation is the convergence of patent procedures of different countries as much as possible. The Paris Convention for the Protection of Industrial Property has established some necessary procedural and administrative norms to grant patents. To have an effective patent system in the country, the convention requires all countries to create a special service for activities in the field of industrial property protection and a central repository so that society can ensure the protection of inventions, utility models, industrial property, and especially, its international protection cannot be implemented,⁵ if a party to the convention There will be no national administrative service in the state, which registers industrial property rights and distributes data about them publicly. Patent rights are obtained as a result of conducting a patent examination, which consists of checking the formal requirements of the application and the essential requirements of the invention or utility model contained in it, publishing data about the object of protection after deciding on granting a patent, during which the essence of the invention and utility model is made public

2 WIPO. (2016). Understanding Copyright and Related Rights. 4-8.

3 Georgian Patent Law. (1999). Article 2. <<https://matsne.gov.ge/ka/document/view/11470?publication=9>>

4 Georgian Patent Law. (1999). Section 6. <<https://matsne.gov.ge/ka/document/view/11470?publication=9>>

5 Dzamukashvili, D., (2017). Intellectual Rights Law. Bona Kauza. 302.

1 Kanagavel, P. (2003). Intellectual Property Rights: A Comprehensive Overview. J. Pat. & Trademark Off. 664-665.

because any person able to familiarize with the description, formula of the invention and other materials. The publication procedure includes a 3-month period during which competitors are allowed to challenge the grant of the patent in the patent itself by filing an appeal. If not, a patent will be issued. A re-examination procedure is also provided, which can be held after the patent is issued and can end with the cancellation of the patent. This procedure step has been introduced in Georgia since 2010 and has been applied by interested parties many times. The Patent Law of Georgia stipulates the listed procedures and the instructions on the procedures related to drawing up, submitting, and granting a patent for an invention and utility model application,⁶ are fully compliant with the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty, as well as other international acts, including those to which Georgia is not a party.

The Paris Convention requires the National Service to ensure the periodic publication of the official industrial property bulletin.⁷ In all countries that are party to the Paris Convention, this provision is unconditionally fulfilled, and there is an office, usually called a patent or industrial property protection office. This body is the main link of the national patent system for all countries. Such a body in Georgia is the National Intellectual Property Center of Georgia "Sakpatenti".⁸ Before establishing this body, the patent examination centre "Patentcenter" had been operating since January 1992; during its operation, basic instructions were developed, a team of experts was formed, and the application examination began on May 1, 1992. The Patent Center did not have a predecessor organization in Georgia. It was the first national body in the entire post-Soviet space, launched after gaining independence, and it had to overcome many difficulties.

2. SUBMISSION OF PATENT APPLICATION

The rights and duties granted by the law acquire social significance only in the case and under the condition that they can be fulfilled⁹. We believe that rights and duties must be performed voluntarily. To some extent, this appears as a moral guarantee for the use of the rights and duties stipulated by the legislation. For the state to ensure the effectiveness of the law, it also establishes legal guarantees, which are manifested by the implementation of law enforcement measures, which provide for the forced performance of duties, if the obliged party avoids or does not perform a legal action. The basis for changing and terminating the origin of rights and obligations is always the occurrence of a certain fact in reality, which the law gives legal significance and reflects in the relevant legal norms. Such facts are called legal facts. Patent rights obligations arising from the creation of a patentable object, the submission of an application, the publication of an application, the issuance of a patent, the use of patented objects, and the issuance of a patent. Their origination or termination may also occur according to such an event as the arrival or expiration of the term with which the law connects the origination or termination of the given right.

3. OBTAINING PATENT RIGHTS THROUGH INTERNATIONAL PROCEDURE

Obtaining a Georgian patent, i.e. signing patent rights for an invention in Georgia, can be done through an international procedure, through an international application. By the same procedure, a Georgian applicant can obtain a patent abroad. An international application is an application that is formed according to the terms of the patent cooperation agreement¹⁰. The mentioned agreement, to which Georgia is also a party, establishes requirements for drawing up and signing an international application. These requirements are called the re-

6 Ibid. 303.

7 The Paris Convention for the Protection of Industrial Property, an international agreement established in 1883, is one of the key treaties governing intellectual property rights.

8 Dzamukashvili, D., (2017). Intellectual Rights Law. Bona Kauza. 309.

9 Sen, A., (2012). Elements of a Theory of Human Rights. 1st Edition. Routledge. 25-28.

10 <<https://www.sakpatenti.gov.ge/ka/page/40/>>

quirements established by the national legislation of Georgia. According to the agreement, citizens of the party countries, persons with permanent residence or persons with active entrepreneurial activities have the right to submit an international application. A citizen of each party country can submit an application in any language to the patent office of his country or to the relevant office indicating the country where patent protection is sought. If the application is not made in the working language of the contract, then it must be translated into one of these languages (English, Russian, French, German, Japanese, Chinese, Spanish).¹¹ If a foreign applicant mentions Georgia, the application must be written or translated into English or Russian.¹² A citizen of Georgia, in turn, can submit an international application to "Sakpatenti", which will perform the functions of the receiving agency and, after checking the formal requirements in the agreement, will ensure that the application is forwarded to the international bureau. The applicant is obliged to pay the basic international application fee, the amount of which is determined by the International Bureau.

Publication¹³ after 18 months from the priority. The date of delivery of the international application is determined based on this fact. It will be considered the application filing date in all countries participating in the agreement.

Based on international information research, the authorized body prepares a report containing data on the identified analogies.¹⁴ Information research is preferably conducted using patent information. An international report is sent to the applicant, who evaluates his invention and outlines the countries where he would like to receive a patent. In addition, the applicant may withdraw the application if he is convinced of the weakness of the invention's patentability. The final selection must be made no later than 30 months after the priority date, and the application must proceed to the national phase stage of the patent examination of the chosen country. A period of 30 months

is also given to the applicants of those countries who want to conduct the international preliminary examination provided for in the second chapter of this agreement.

Based on the preliminary examination conducted by the above-mentioned authorized body, a documentary conclusion is drawn, indicating whether the unwritten invention in the application meets the patentability criteria.¹⁵ The conclusion will be sent to the applicant, which marks the end of the international procedure. After that, the applicant must move to the national phase per the requirements of all the countries where he wants to obtain a patent. It should be noted that according to the agreement, the national patent office is not required to rely on the conclusion of the preliminary international examination. A patent is issued in compliance with all requirements of national normative acts. When transferring the application for a Georgian patent to the national phase, it must be translated into the Georgian language. Based on the international application and the submission of an international application by a Georgian citizen, the possibility of obtaining a patent in a foreign country is governed by the norms of the Patent Law of Georgia, which contains norms and indicates the use of the patent cooperation agreement.¹⁶ Unfortunately, the official Georgian translation of this agreement has not been published yet.

4. CHECK FOR NEWNESS

A novelty check is carried out, and a decision is made based on it according to Articles 35 and 42 of the Patent Law of Georgia. Novelty is checked by looking for the analogy with one of the searched objects by comparing the set of essential features of the claimed invention or utility model.¹⁷ When checking, only the set of essential signs given by the dependent clauses of the formula is taken into account. As for the object with which the invention is compared during the examination of novelty, the combination of its essential features, expressed in

11 Dzamukashvili, D., Intellectual Rights Law. Tbilisi. 2017. 325.

12 Georgian Patent Law. (1999). Article 74. <<https://matsne.gov.ge/ka/document/view/11470?publication=9>>

13 Ibid. Article 75.

14 Bennett, B. Study on Accession to the Madrid System for the International Registration of Marks. Wipo.

15 Georgian Patent Law. (1999). Article 35. <<https://matsne.gov.ge/ka/document/view/11470?publication=9>>

16 Georgian Patent Law. (1999). Article 72. <<https://matsne.gov.ge/ka/document/view/11470?publication=9>>

17 Ibid. Articles 35, 42.

any form, is taken into account.¹⁸ For example, if a drawing or diagram conveys a set of essential features in a way that is fully comparable to the set of features of the invention, then it is sufficient to analyze that drawing or diagram without other materials. When analyzing an article or other description, any part sufficiently conveys a set of essential features for comparison is considered. A similar rule applies when analyzing the description of the contested invention. In addition, it should be noted that all previously filed applications that were not filed before publication are checked in "Sakpatenti". An earlier application by the same inventor that was not granted a patent is not considered when checking for novelty.

If, during the inspection, it is found that the set of essential features of the alleged invention is identical to the set of essential features of the analogue, then the invention is not new, and the patent office is obliged to issue a negative decision regarding the granting of a patent.

CONCLUSION

In summary, the processes involved in acquiring patent rights are complex and dynamic,

¹⁸ Merges, P. R., Duffy, F. J. (2010). Patent Law and Policy: Cases and Materials. Carolina Academic Press. 55.

changing to meet global collaboration needs and technological improvements. Georgia has demonstrated its commitment to promoting innovation and safeguarding intellectual property by forming "Sakpatenti" as the country's national patent authority and ratifying the Paris Convention and Patent Cooperation Agreement.

The international component, which gives Georgian innovators access to a streamlined and effective process for pursuing patent rights, illustrates how intertwined the world's intellectual property landscape is. Navigating the complexities of patent application delivery, publication, and the ensuing national and international stages reveals that the system's efficacy rests in its capacity to strike a balance between innovators' rights and the need to disseminate public knowledge.

The processes described here provide a way to guarantee the originality and creativity of works while also giving exclusive rights in the dynamic field of intellectual property. Georgia's efforts to promote innovation and support the global knowledge economy are demonstrated by harmonising its patent procedures with international standards, even as the country continues to negotiate this complex terrain.

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